MILITARY COMMISSIONS TRIAL JUDICIARY GUANTANAMO BAY, CUBA

UNITED STATES OF AMERICA

Defense Motion for Appropriate ReliefOrder for Production of Discovery

v.

MOHAMMED KAMIN

9 July 2008

- 1. <u>Timeliness</u>: This Motion is timely filed in accordance with Rule for Military Commission (R.M.C.) 701(l)(3)(A) and within the deadline prescribed by the Commission in its Ruling on D-002 (Defense Request for Extensions and Revised Trial Schedule).
- 2. Relief Sought: Detailed defense counsel for Mr. Mohammed Kamin¹ respectfully requests the Commission provide the following relief:
- a. That within five days of issuance of the order, the government shall provide a written response to the defense request for discovery, dated 12 June 2008, and provide the defense a copy or the right to examine all information, documents, and materials requested therein;
- b. That within five days of issuance of the order, the government shall provide a written response to the defense request for discovery, dated 19 June 2008 (SECRET//NOFORN), and provide the defense a copy or the right to examine all information, documents, and materials requested therein;

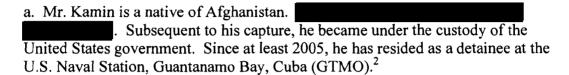
¹ Detailed defense counsel files this Motion solely under the authority provided by the Commission on 21 May 2008 that detailed defense counsel shall represent the accused in this case and engage in the discovery process. Lacking authority from Mr. Kamin to do anything in his defense, detailed defense counsel concurs that he can, and will, ethically engage in the discovery process to be prepared if, in the future, Mr. Kamin were to change his mind and allow detailed defense counsel to fully represent him.

- c. That within five days of issuance of the order, the government shall provide a written response to the defense request for discovery, dated 19 June 2008, and provide the defense a copy or the right to examine all information, documents, and materials requested therein; and
- d. Issue an Order to the Commander, Joint Task Force Guantanamo Bay, Cuba (JTF-GTMO) that it shall, within three days of issuance of the order, provide to the Prosecution, for release to the detailed defense counsel for Mohammed Kamin, any and all medical records in the possession of JTF-GTMO related to Mohammed Kamin, including any mental health records. [Attachment A]
- 3. Overview: The government has provided only a mere scintilla of discovery to the defense. Remarkably, this is true despite the following:
- a. Ubiquitous legal authority requiring discovery be timely provided to the defense;
- b. An Order from the Military Judge to the government to provide discovery to the defense no later than 1600 EST on 6 June 2008;
- c. Numerous verbal and written requests from defense counsel to the government requesting that discovery be provided;
- d. Numerous verbal and written assurances by trial counsels to defense counsel that discovery will be provided;
- e. Ninety-six days having elapsed since the date charges were referred for trial by Military Commission; and
- f. Ninety-three days having elapsed since the government was notified that defense counsel was detailed to represent Mr. Kamin.

The defense comes now to the Commission seeking relief.

4. Burden and Standard of Proof: As the moving party, the defense bears the burden of persuasion. The defense also bears the burden of proof on any question of fact; this burden is met by a showing of a preponderance of evidence. *See* R.M.C. 905(c).

5. Facts:



- b. Charges against Mr. Kamin were referred for trial by Military Commission on 4 April 2008. [AE 001] On 7 April 2008, the Chief Defense Counsel detailed LT Richard Federico, JAGC, USN, to represent Mr. Kamin. [AE 007]
- c. On 10 April 2008, COL W. Thomas Cumbie, USAF, was detailed as Military Judge and notified the parties that Mr. Kamin was to be arraigned on the charges on 28 April 2008. [AE 005]
- d. On 16 April 2008, defense counsel submitted a Special Request for Relief seeking a continuance of the arraignment. [D-001]. Included within that request was a justification that defense counsel had not yet been provided any discovery. See D-001, ¶ 5.
- e. On 20 May 2008, the Military Judge held a conference with counsel pursuant to R.M.C. 802. At the 802, the Military Judge explained to the parties his view on discovery. He stated to the government that it was to do the following: "If you got it, give it to the defense; If you don't have it, tell the defense you don't have it; If you have it and don't intend to give it to the defense, you give it to me." (or words to that effect). Trial counsel (Maj. Omar Ashmawy, USAF) responded in the affirmative that he understood the Military Judge's instructions.
- f. Additionally on 20 May, Maj Ashmawy informed defense counsel that he had a stack of records on his desk from JTF-GTMO detailing behavioral issues with Mr. Kamin. He also informed that there were medical records detailing prior mental health issues. Defense counsel asked for copies of all of these records. That request was verbally denied.
- g. Mr. Kamin was arraigned on the Charge on 21 May 2008. As he repeatedly stated during the arraignment, Mr. Kamin refused to be represented by his detailed defense counsel. Mr. Kamin also declined to represent himself, *pro se*, and further stated his intent not to attend future proceedings.

² Unfortunately, the defense has no ability to provide specific facts regarding capture, custody, dates, and locations. As the subject of this Motion explains, the defense has not received any information relating to these, or other, relevant and material facts.

h. The Commission ordered LT Federico to represent Mr. Kamin because

See Transcript of

Hearing ICO United States v. Kamin, May 21, 2008 (Draft), pg. 42.

i. During the arraignment, the Military Judge further stated to the government,

Id. at 44. Maj. Ashmawy responded

Id. Protective Order #1

was ordered by Military Judge on 5 June 2008. [PO 001]

- j. During the arraignment, defense counsel raised the issue of the mental health records and requested an order from the Commission that such records be released. In response, the government concurred that JTF-GTMO required an order from the Military Judge to release these records and further stated, "[a]s we have already told the defense we are more than happy to provide them that information." *Id.* at 45. The government also sought to expand the request from the defense to include all medical, mental health, and dental records. The Military Judge directed the release of the mental health records to trial counsel and stated that he needed to *Id.* at 46.
- k. On 22 May 2008, the Commission issued the first Schedule for Trial. On 23 May 2008, defense counsel submitted a Special Request for Relief that requested, in part, that "The Court order the government to provide discovery to the defense at the earliest possible date." **D-002**, ¶4.c.
- l. On 4 June 2008, the Commission issued its Ruling on D-002 and ordered "the government will provide discovery to the defense NLT 1200 on 6 June 2008. **MJ 002**, ¶ 4.c.
- m. On 9 June 2008³, the government provided some discovery to the defense. The government provided two CDs on that date. The first, unclassified CD, was 33 pages of records related to mental health assessments or evaluations from the JTF-GTMO Behavioral Healthcare Services Case Review/Treatment Team ("BSCT")⁴. The second CD, SECRET//NOFORN, contained 55 pages. This CD was the "referral binder," or the information provided to the convening authority

³ Per the Order, the government sought to deliver this discovery to the defense on 6 June 2008. However, defense counsel was in GTMO on that date and made arrangements to receive it on his first day back in his office in CONUS, 9 June 2008.

⁴ These records indicate there are to be monthly follow-up evaluations. Either these evaluations were not done or the government has not provided those records to the defense. Further, several records refer to "Medical Record" for a certain mental health diagnosis – documents that, despite a specific discovery request submitted, have not been provided to the defense. The Prosecution has represented to the defense that JTF-GTMO has reviewed all medical records of the accused and only provided the 33 pages on the CD.

prior to referral (12/55 pages were the charge sheet, convening order, legal advisor advice, and letter from the trial counsel to the convening authority).

- n. On 12 June 2008, defense counsel submitted a Request for Discovery ("Discovery Request 1"). [Attachment B]. The defense requested the government respond, in writing, no later than 1600 EST, Thursday, 19 June 2008. See Discovery Request 1, ¶ 66.
- o. On 19 June 2008, the government responded to Discovery Request 1. [Attachment C] In its response, the government noted that it "intends to make additional production of materials" and it "has been gathering the material discussed" See Response, ¶ 3. The reason for delay was that all materials must be reviewed by the "equity owners" of the information and that "each document produced as a result of this filing must first be read to ensure that it does not contain classified material or information that would be detrimental to the security of the United States of America." Id. As of the date of this filing, the government has not provided to the defense any of the materials requested.
- p. On 19 June 2008, defense counsel submitted a Request for Discovery on SIPRNET (SECRET//NOFORN) ("Discovery Request 2")⁵. On that same date, defense counsel sent an email to the trial counsels on unclassified email to notify them that the request was submitted on classified email. As of the date of this filing, the government has not provided to the defense any of the materials requested.
- q. Also on 19 June 2008, defense counsel submitted a Request for Discovery ("Discovery Request 3") that specifically requested all records in control of or known to the government concerning the physical and mental health of the accused. [Attachment E]. This request was submitted as an attachment to an email wherein defense counsel noted that "it is critical that the defense be provided this information as soon as possible." See Email of LT Federico, ¶ 1. [Attachment F]. As of the date of this filing, the government has not provided to the defense any of the materials requested.
- r. On 30 June 2008, the government responded to the Email of LT Federico. It again stated that "we are working on a response" and that "we are diligently processing your requests." Again, as of the date of this filing, the government has not provided to the defense any of the materials requested in Discovery Requests 1, 2, or 3.

6. <u>Law and Argument:</u>

a. Each party shall have adequate opportunity to prepare its case and no party may unreasonably impede the access of another party to a witness or evidence. *See* 10

⁵ The defense will provide Discovery Request 2 to the Commission, UNDER SEAL, as **Attachment D**, if/when a Senior Security Advisor is designated by the Commission to receive such a filing.

U.S.C. § 949j (2006). The defense has not been provided an adequate opportunity to prepare its case because of the government's complete failure to meet its discovery obligations. As a result of not having this information, the defense counsel has essentially been left to steer a rudderless ship.

Ъ. In addition to all other information clearly articulated in R.M.C. 701, the defense is entitled to examine all materials that are within the possession, custody, or control of the government, the existence of which is known or by the exercise of due diligence may become known to trial counsel, and which are material to the preparation of the defense or are intended for use by the trial counsel as evidence in the prosecution case-in-chief at trial. See R.M.C. 701(c) (emphasis added). The discussion following paragraph (c) indicates that the Military Judge should look to United States v. Yunis, 867 F.2d 617 (D.C. Cir. 1989) for the definition of "material to the preparation of the defense." In *United States v. Yunis*, the court defined "material to the preparation of the defense" as "helpful to the defense of an accused." *Id.* at 622. All of the information, documents, and materials sought by the defense in Discovery Requests 1, 2, and 3 are material to the preparation of the defense. This is especially true if the Military Judge looks towards established military case law as precedent. See United States v. Enloe, 15 U.S.C.M.A. 256 (C.M.A. 1965) ("military law has been preeminent, jealously guaranteeing to the accused the right to be effectively represented by counsel through affording every opportunity to prepare his case by openly disclosing the Government's evidence."); United States v. Reece, 25 M.J. 93, 94 (C.M.A. 1987) ("military courts recognize a much more direct and generally broader means of discovery by an accused than is normally available to him in civilian courts.").

c. As the record of this case demonstrates, the defense has been diligent and persistent in requesting discovery from the government. The government's constant refrain, that it is working to gather the information, is insufficient. Mr. Kamin has been confined under the control of the United States government since, presumably, 2003.⁶

That is over five years in confinement.

amount of time to perfect its case against him. It is bewildering that while Mr. Kamin sits in his prison cell in GTMO, the United States appears content to casually let time pass while it fails to meet its discovery obligations that require it to turn over the fruit of its five-year investigation to the lone defense counsel detailed to represent him.

d. The government cannot hide behind a classification review by "equity owners" as an excuse for further delay of providing discovery to the defense. *See*Attachment C, ¶ 3. The adversarial party to Mr. Kamin is the "United States of America." -- one government. That is, not simply the prosecutors or the Department of Defense, but the entire executive branch of the United States government. All delayed incurred by any agency of the Executive branch in conducting this classification review must be imputed to the entire government. The Founders decided to vest Executive authority in one person rather than several. *See Clinton v. Jones*, 520 U.S. 681, 712 (1997). "They did so in order to focus, rather than to spread, Executive responsibility thereby facilitating accountability. They also sought to encourage energetic, vigorous, decisive, and speedy execution of the laws by placing in the hands of a single,

⁶ Again, as the defense has received no discovery from the government relevant to this contention and is thus unable to provide any detail as to the length of confinement, specific camp locations, conditions of confinement, etc. However, information from "open sources" reveals undoubtedly that the facts contained herein are true. It is unacceptable that defense counsel has been essentially limited to solely using the Internet to learn about Mr. Kamin and this case.

constitutionally indispensable, individual the ultimate authority that, in respect to the other branches, the Constitution divides among many." *Id*.

- e. The Military Judge clearly has the authority to order the government to produce the discovery to the defense. *See* R.M.C. 701(l)(3)(A). It is customary in criminal cases that the defense and government argue over what is discoverable as exculpatory information and/or "material to the preparation of the defense." *See Brady v. Maryland*, 373 U.S. 83 (1963); *United States v. Kern*, 22 M.J. 49, 51 (C.M.A. 1986); R.M.C. 701(c). In the present case, the government has not yet responded to the defense request. Thus, the defense is left to seek broad relief from the Commission in the form of an order to the government that it shall, within five days of the issuance of the order, respond to Discovery Requests 1, 2, and 3 and provide the defense a copy or the right to examine all information, documents, and materials requested therein.
- 7. Request for Oral Argument: The defense does not request oral argument, unless there is a dispute as to any material fact necessary for resolution of the issue. If such a dispute were to arise, the defense reserves the right to request production of witnesses and to request a hearing and oral argument.
- 8. Witness Request: None.
- 9. <u>Conference with Opposing Counsel</u>: Pursuant to Military Commissions Rules of Court, Rule 3.3, the defense conferred with the Prosecution regarding its requested relief. The prosecution replied, "we are working on your discovery requests, we are just waiting to get some stuff back

10. Attachments:

A. Proposed Order to JTF-GTMO (1 pg.)

- B. Defense Request for Discovery, dated 12 June 2008 (18 pgs.)
- C. Government Response to Defense Discovery Request, dated 19 June 2009 (1 pg.)
- D. Defense Request for Discovery, dated 19 June 2008 (SECRET//NOFORN) To be provided UNDER SEAL
- E. Defense Request for Discovery, dated 19 June 2008 (3 pgs.)
- F. Email of LT Federico to Trial Counsels, dated 19 June 2008 (2 pgs.)

Respectfully submitted,

LT RICHARD E.N. FEDERICO, JAGC,

Detailed Defense Counsel for

Mohammed Kamin

Office of the Chief Defense Counsel

Office of Military Commissions

ATTACHMENT A

MILITARY COMMISSIONS TRIAL JUDICIARY GUANTANAMO BAY, CUBA

UNITED STATES OF AMERICA	ORDER
v.	
MOHAMMED KAMIN	July 2008

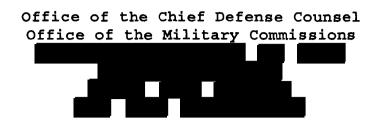
1. This Order is issued pursuant to the authority under the Military Commissions Act (MCA) of 2006 (10 U.S.C. §§ 948a, et seq.) and the Manual for Military Commissions (MMC).

2. Accordingly, IT IS HEREBY ORDERED:

That the Commander, Joint Task Force – Guantanamo Bay, Cuba (JTF-GTMO) shall provide to the Prosecution, within three days of the issuance of this order, for release to the detailed Defense Counsel for Mohammed Kamin, any and all medical records in the possession of JTF-GTMO related to Mohammed Kamin, including any mental health records.

W. Thomas Cumbie Colonel, U.S. Air Force Military Judge

ATTACHMENT B



12 Jun 08

From: LT Richard E.N. Federico, JAGC, USN, Detailed

Defense Counsel

To: MAJ Omar Ashmawy, USAF, Trial Counsel

LT Rachel Trest, JAGC, USN, Assistant Trial Counsel

SUBJ: REQUEST FOR DISCOVERY ICO UNITED STATES V. MOHAMMED

KAMIN, ISN 1045

Ref: (a) R.M.C. 701(b)

- 1. Pursuant to reference (a) and any and all applicable laws cited herein, the accused, Mohammed Kamin, by and through his detailed defense attorney, hereby requests that the government produce each of the items listed in the sections below. The defense requests that the government notify the defense in writing as to which specific items or requested information or evidence will not be provided and a specific basis for denial of discovery.
- 2. The specific items listed below are examples, not limitations, of the items requested under a cited provision. The requested evidence is material to the preparation of the defense and/or is exculpatory. Defense counsel cannot properly provide effective assistance of counsel, nor prepare for trial, without production of the documents and items requested. The requested information is known, or should, with the exercise of due diligence, be known to the United States or its agents. If the government does not intend to provide defense with copies of documents or tangible objects the defense requests a reasonable opportunity to inspect, photograph and photocopy such documents or objects.

DOCUMENTS AND TANGIBLE EVIDENCE

3. All papers which accompanied the charges at preferral and referral, specifically to include, but not be limited to:

- a. The charge sheet and all allied papers, transmittal documents accompanying the charges from one headquarters to another, or which accompanied the charges when they were referred to a military commission;
- b. Any sworn or signed statement relating to an offense charged in this case;
- c. All law enforcement reports whether prepared by military or civilian law enforcement personnel;
- d. Any order purporting to refer the charges to a military commission, convening order, any pretrial advice given in conjunction with such an order, or any order appointing and describing the duties of the convening authority;
- e. Any other qualifying document, order, or statement described in R.M.C. 701(b)(1)(A).
- 4. Any books, papers, documents, photographs, or copies or portions thereof and the opportunity to inspect tangible objects, buildings, or places that are in the possession, custody, or control of the United States, and that are material to the preparation of the defense or are intended for use by the trial counsel as evidence in the prosecution case in chief, or were obtained from or belong to the accused. R.M.C.701(c)(1). The foregoing shall include, but not be limited to:
- a. All drafts of FBI "302" forms and CITF "40" forms provided to the defense;
- b. All FBI "302" forms and CITF "40" forms or other notes taken during interviews of the accused for all periods;
- c. All materials in the possession, custody or control of the government, including, without limitation, intelligence, law enforcement, or other files, relating to the participation of the following individuals as those commonly referenced as members of al Qaeda, the terrorist organization alleged in Specifications 1, 2, 3, 4, and 6 under the Charge, and/or specifically referenced during the Combatant Status Review Board of the Accused held on 17 November 2004, or subsequent Administrative Review Boards:
 - 1. Usama Bin Laden

- 2. Ayman Al Zawahiri
- 3. Abu Layth al Libi
- 4. Abdul Rahman
- 5. Rasul Khan
- 6. Mirah Shaw
- 7. Abdul Manan
- d. All materials within the possession, custody and control of the government relating to the investigation and prosecution of Damien M. Corsetti;
- e. All materials within the possession, custody and control of the government relating to the investigation and/or prosecution of other individuals for detainee mistreatment or abuse at Bagram Airbase, Afghanistan, from any time in or around May 2003 until present;
- f. All materials relating to interrogation methods permitted or used at Bagram Air Force Detention Facility, Guantanamo Bay Detention Facility;
- g. All materials relating to interrogation methods permitted or used on the accused at any location, including those not publically acknowledged by the United States government;
- h. All materials within the possession, custody, and control of the government relating to or describing events forming the basis for the charges, including, but not limited to, reports prepared by non-DoD federal agencies;
- i. A list of all eyewitnesses to the events forming the basis for the charges;
 - j. Any handwritten statement prepared by Mr. Kamin;
- k. All results of any interrogations or interviews of Mr. Kamin;
- 1. Any videotape, real-time, or other imagery relating to the events forming the basis for the charges, including, without limitation, any videotape or other recording of said events. R.M.C.701(c)(1);

- m. Any physical evidence seized relating to the alleged overt acts committed in furtherance of the Charge. R.M.C.701(c)(1);
- n. Any video or audio tape recording of any interrogation or interview of Mr. Kamin by any person or entity, including, but not limited to, any video or audio tape recording of interviews by intelligence and/or law enforcement officials. R.M.C.701(c)(1);
- o. Any video or audio tape recording of any movements or transfers of Mr. Kamin at Guantanamo Bay, Cuba,
- p. All interrogation manuals, directives, instructions and other policy guidance issued by any agency involved in any aspect of the intention and interrogation of Mr. Kamin or of any other witness in the case, including individuals whose statements the government provides to the defense through discovery;
- q. Interrogation logs relating to all interrogations of Mr. Kamin conducted since his capture;
- r. All records maintained by JTF-GTMO in the Detainee Information Management System (DIMS) concerning the accused;
- s. All records maintained by JTF-GTMO in the DIMS concerning any detainee who is expected to testify on behalf of the United States or from whom information has been obtained for use by the United States;
- t. Names, photographs, and contact information of all interrogators (law enforcement and/or intelligence) who participated in interrogations of the accused since the time he has been in the custody of the United States, at any location;
- u. The identity of all guards who worked at the Bagram prison while Mr. Kamin was in custody there;
- v. All reports, notes or records regarding Mr. Kamin while he was in the custody at any location;



- x. Any written statement or summary of interview of any person taken in connection with the investigation referenced in 4.w;
- y. Any audio or video tape of any interview conducted in connection with 4.w;
- z. Any other matter gathered in connection with the investigation referenced in 4.w;



- 5. Any death investigations, homicide reports, pathology reports and all other evidence relating to the deaths of detainees at Bagram Air Base, Afghanistan.
- 6. The defense requests notification of testing upon any evidence that may consume the only available samples of the evidence and an opportunity to be present at any such testing; and an opportunity to examine all evidence, whether or not it is apparently exculpatory, prior to its release from the control of a government agency or agents. United States v. Mobley, 31 MJ. 273, 277 (C.M.A. 1990); United States v. Garries, 22 M.J. 288, 293 (C.M.A. 1986).
- 7. Please provide all chain of custody documents or litigation packets generated by any law enforcement or military agency in conjunction with the taking or testing of evidence during the investigation of the alleged offenses.
- 8. Any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, that are within the possession, custody, or control of military authorities at all any level, the existence of which is known, or by the exercise of due diligence may become known, to the trial counsel, and which are material to the preparation of the defense or are intended for use by the trial counsel as evidence in the

prosecution case in chief at trial. R.M.C. 701(c)(2). This specifically includes, but is not limited to:

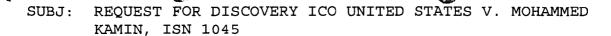
- a. Copies of the records of any and all medical screenings, physicals, examinations, mental health evaluations, as well as notes prepared by any treating physician, physician's assistant, medic, psychiatrist, psychologist, chaplain, counselor, or other person who has examined the mental or physical condition of Mr. Kamin at any time since he entered the custody of the United States.
- b. The defense does not authorize the government to review or examine any such reports, notes, or other documents as they may be covered by M.C.R.E. 503 or 513, by M.C.R.E. 302, or by common-law privileges and privacy interests with respect to medical treatment. The defense does, however, request that the government order any such material turned over to the defense and provide contact information for any person who obtained or created such reports or other materials.
- 9. Any statement oral, written, or recorded made or adopted by the accused, that are within the possession, custody, or control of the government, the existence of which is known or by the exercise of due diligence may become known to the trial counsel, and are material to the preparation of the defense or are intended for use by trial counsel as evidence in the prosecution case-in-chief at trial. R.M.C. 701(c)(3).
- 10. All written material that will be presented by the government as evidence at the presentencing proceedings. $R.M.C.\ 701(d)(1)$.
- 11. All writings or documents used by a witness to prepare for trial, to include any writings or documents used by any witness to refresh memory for the purpose of testifying, either while testifying or prior to testifying. M.C.R.E. 612.
- 12. A photocopy of the entire CITF or other investigative files, to include all case notes, case agent summaries, interim, final and supplemental CITF reports, interrogation reports, photographs, slides, diagrams, sketches, drawings, electronic recordings, handwritten notes, interview worksheets, and any other information in the CITF case file or associated with this case, including the files of any other government agency not a part of CITF. Additionally,

the defense requests the names, current addresses, and current telephone numbers and email addresses of all government and civilian investigators who have participated in the investigation. R.M.C. 701(b)(1)(C); R.M.C. 701(b)(2).

STATEMENTS AND WITNESSES

- 13. All statements, in any form to include, but not limited to, hand-written, typed or recorded statements or summaries of conversations, concerning the offenses that are in the possession of the government. This includes all statements of any person, not just the accused or potential government witnesses, taken by or given to any person or agency including all civilian or military law enforcement agencies, inspector general investigations, intelligence agencies, military units, or any other agency or person involved in this case. R.M.C. 701(b)(l)(C); R.M.C. 701(c)(l); R.M.C. 701(c)(3).
- 14. Provide all oral and written statements made by government witnesses relating to this case, R.M.C. 914, 18 U.S.C. § 3500 et. seq.
- 15. Provide the names, addresses and telephone numbers (commercial and DSN, if applicable) of all witnesses the government intends to call to rebut a defense of alibi or lack of mental responsibility. R.M.C. 701(b)(2)(B). At this time, the defense does not claim that the accused has an alibi defense or that the accused lacked mental responsibility at the time of the charged offense. If such a defense becomes known, the defense will notify the government. The defense cannot make a determination about the latter defense until the government has complied with all discovery requested in paragraph 4 of this request.
- 16. Provide all hearsay statements, oral or written, intended to be offered at trial under M.C.R.E. 803. Please provide notice of the intent to offer the statement and "the particulars of the evidence" including the time, place and conditions under which the statement was obtained, the name of the declarant and the declarant's telephone numbers and address. M.C.R.E. 803(b).
- 17. Provide information concerning any immunity or leniency granted or promised by any government witness in exchange for testimony. R.M.C. 701(c)(l); M.C.R.E. 301(c)(2).

- 18. Any intent by the government to invoke R.M.C. 701(f) or M.C.R.E. 505 or 507, as well as the purpose and rationale supporting the invocation of such a privilege. If the government does invoke such privilege, the defense requests immediate compliance with R.M.C. 701(f)(3), 701(f)(5), and 701(f)(6). The defense intends to challenge the government's use of this privilege and, in order to prepare for litigation of the matter, requests the production of summaries of the evidence as contemplated by R.M.C. 701(f)(3) and 701(f)(5).
- 19. The identity, including name, address, and telephone number, of any informants and/or notice of a government's intent to exercise privilege under M.C.R.E. 507.
- 20. Disclose all evidence affecting the credibility of government witnesses to include, but not limited to:
- a. Prior civilian and court-martial conviction and all arrests or apprehension of government witnesses. In complying with this discovery request, the defense requests the government check with the National Crime Information Center (NCIC), National Records Center (NRC), and all local military criminal investigatory organizations for each witness. *United States* v. *Jenkins*, 18 M.J. 583, 584-585 (A.C.M.R 1984); R.M.C. 701(c).
- b. Records of nonjudicial punishment, or adverse administrative actions (pending and completed), whether filed in official files or local unit files including, but not limited to, discharge prior to expiration of term of service for any reason, relief for cause actions, letters or reprimand or admonition and negative counseling relating to adverse or disciplinary actions concerning any government witness. R.M.C. 701(c).
- c. All investigations of any type or description, pending initiation, ongoing or recently completed that pertain to alleged misconduct of any type or description committed by a government witness. *United States* v. *Stone*, 40 MJ. 420 (C.M.A. 1994); R.M.C. 701(c).
- d. All evidence in control of or known to the United States concerning the mental status of Mr. Kamin or any government witness. *United States* v. *Green*, 37 MJ. 88 (C.M.A. 1993). Material sought includes, but is not limited to, medical records reflecting psychiatric diagnosis or treatment or head injury of any type and drug



and/or alcohol addiction diagnosis or rehabilitation records. United States v. Brakefield, 43 C.M.R. 828 (A.C.M.R 1971); United States v. Brickey, 8 M.J. 757 (A.C.M.R 1980) affirmed 16 M.J. 258 (C.M.A. 1983); United States v. Eschalomi, 23 M.J. 12 (C.MA 1985); R.M.C. 701(c)(2).

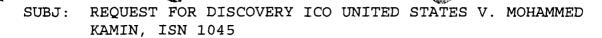
- e. Evidence of character, conduct or bias bearing on the credibility of government witnesses in the control of or known to the United States including, but not limited to: information relating to any past, present, or potential future plea agreements, immunity grants, payments of any kind and in any form, assistance to or favorable treatment with respect to any pending civil, criminal, or administrative dispute between the government and the witness, and any other matters that could arguably create an interest or bias in the witness in favor of the government or against the defense or act as an inducement to testify to color or shape testimony. Giglio v. United States, 405 U.S. 15 (1972); R.M.C. 701(c).
- f. The current and, if applicable, the former military status of all witnesses to include: the date of separation, the discharge status and a summary of the circumstances explaining any discharge; further, please provide copies of the each government military witnesses' counseling file. R.M.C.701(c).
- g. Copies of the official civilian personnel file of any government witness that is a civilian employee of the United States. R.M.C.701(c).
- h. The results of any polygraph examinations, including the Polygraph Examiner Report and related polygraph records, the Polygraph Consent Form, the Polygraph Examination Authorization Request, the Polygraph Examination Quality Control Review and any rights certificate executed by the examiner and the subject. United States v. Mougenel, 6 M.J. 589 (A.F.C.M.R 1978); United States v. Simmons, 38 M.J. 376 (C.M.A.1993); R.M.C. 701(c).
- i. Any writing or document used by a witness to prepare for trial. M.C.R.E. 612.
- j. The contents of all CITF accreditation files for all CITF investigators who have participated in investigations relating to this case, and similar such files for agents of

any other government agency who have have participated in investigations relating to this case. R.M.C.701(c).

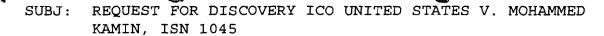
- 21. A copy of the Official Military Personnel File (OMPF) of all witnesses intended to be called by the Government on the Government's case in chief or during the pre-sentencing phase of the trial. R.M.C.701(c)(1).
- 22. Notice of whether the government intends to impeach any witness with a conviction older than ten years. M.C.R.E. 609(b).

EVIDENCE REGARDING MOHAMMED KAMIN

- 23. The defense requests the contents of all statements, oral or written, made by Mr. Kamin that are relevant to the case, known to the trial counsel and within control of the armed forces, regardless whether the government intends to use the statements at trial. M.C.R.E. 304(d)(1); United States v. Dancy, 38 M.J. 1, 4 (C.M.A. 1993).
- 24. Notice of all evidence seized from the person or property of Mr. Kamin or believed to be owned by the accused that is intended to be offered at trial.
- 25. Evidence of any prior identification of Mr. Kamin at a traditional line up, photo line up, show up, voice identification or other identification process that the government intends to offer against Mr. Kamin at trial, or failure or misidentification of Mr. Kamin at any such procedure. R.M.C. 701(c)(1); R.M.C. 701(b)(1)(C); R.M.C. 701(b)(2); R.M.C. 701(e).
- 26. Provide notice of the general nature of evidence of other crimes, wrongs, or other misconduct, the government intends to offer at trial as well as the government's theory of admissibility concerning the prior conduct. M.C.R.E. 404(b).
- 27. All documents or information regarding any mistreatment of Mr. Kamin at the hands of United States or coalition armed forces, civilians or contractors of which the government is aware. This includes any recorded allegation of such mistreatment made by the accused, any witness to the mistreatment, or any non-governmental organization (e.g., the International Committee for the Red Cross) that purports to document allegations of mistreatment. M.C.R.E. 304, R.M.C. 701(e).



- 28. All documents and information related to the capture and/or detention of Mr. Kamin. This includes documents and information regarding the circumstances of capture, transfer to U.S. authorities (if applicable), subsequent transfers between places of detention (to include means, methods and dates of transfer), the identity of all U.S. military units and individuals responsible for and involved in his detention, all records regarding Mr. Kamin's detention up to and including U.S. Naval Base, Guantanamo Bay, Cuba, and conditions of detention. This should include a detailed chronology showing each and every place in which Mr. Kamin has been held in confinement from the time of his capture to the present date. R.M.C. 701(c).
- 29. The names, duty positions, and contact information of all personnel who ordered, supervised, or directed the confinement of the accused from the time of his capture to the present date. R.M.C. 703; R.M.C. 701(e).
- 30. The names, duty positions, and contact information of all personnel who interrogated, questioned, guarded, or otherwise interacted with the accused since the time of his capture. R.M.C. 703; R.M.C. 701(e).
- 31. The defense requests that the government provide all documents related to the conditions under which Mr. Kamin was held from the time of his capture to the present date. This includes, but is not limited to, all written orders, memoranda, directives, SOPs, or other documents that purport to direct agents of the United States government in the manner in which Mr. Kamin should be treated, fed, housed, and given medical attention. This also includes any information relating to mistreatment, abuse, inhumane treatment or conditions, degrading treatment or conditions, cruel or oppressive treatment or conditions, or torture, that is known, suspected, or alleged to have occurred since the date of Mr. Kamin's arrest. R.M.C. 701(e); R.M.C. 701(c)(1).
- 32. All documents and information related to considerations and determinations by the United States or its agents concerning Mr. Kamin's "status" as a detainee (i.e., whether the accused should be given the status of prisoner of war, unlawful enemy combatant, civilian internee, etc.). R.M.C. 701(c)(1).



- 33. All documents and information related to considerations and determinations by the United States or its agents concerning whether the United States was in a state of "armed conflict" (as that term is defined under international law) with the Taliban, al Qaeda, or any alleged terrorist organizations, or any nation-states allegedly sponsoring terrorist organizations from approximately 1990 through the present, and whether any such armed conflict was "international", "internal/non-international" or "internationalized" (as those terms are defined under international law) in character.

 R.M.C.701(c)(1).
- 34. All interrogation techniques used against detainees in Afghanistan, aboard U.S. naval vessels, or at the U.S. Naval Base in Guantanamo Bay, Cuba, as well as identification of which methods were used against detainees whose statements and/or testimony the prosecution intends to introduce at trial. This includes techniques used against Mr. Kamin, as well as against any other detainee whose statements and/or testimony the prosecution intends to introduce at trial. M.C.R.E. 304, R.M.C. 701(e), R.M.C. 701(c)(I).

OTHER EVIDENCE MATERIAL TO THE PREPARATION OF THE DEFENSE

- 35. The defense requests all exculpatory, extenuating, or mitigating evidence known, or, which with reasonable diligence should be known, to the trial counsel that tends to negate the guilt of Mr. Kamin of any offense charged, reduce the guilt of the accused of an offense charged, or reduce the punishment. Brady v. Maryland, 373 U.S. 83 (1963); United States v. Agurs, 427 U.S. 97 (1976); United States v. Bagley, 473 U.S. 667 (1985); United States v. Simmons, 38 M.J. 376, 381 (C.M.A. 1993); United States v. Kinzer, 39 M.J. 559 (A.C.M.R. 1994); United States v. Sebring, 44 M.J. 805 (N.M. Ct. Crim App. 1996); R.M.C. 701(e).
- 36. Request all evidence in rebuttal that is exculpatory in nature or material to punishment. *United States v. Trimper*, 460 M.J. 460 (C.M.A. 1989); *United States v. Dancy*, 38 M.J. 1 (C.M.A. 1993); R.M.C. 701(e).

COMMISSION MEMBERS SELECTION

37. The defense requests the personnel files and officer record briefs of each member of the commission.

Additionally, defense requests any questionnaires submitted by trial counsel to each member and the member's responses. R.M.C. 912.

- 38. All written matters provided to the convening authority concerning the selection of the members detailed to the commission. R.M.C. 912(a)(2).
- 39. The convening order, all amending orders and all requests to be excused received from commission members and any written documents memorializing the denial or approval of the request. R.M.C. 701(b)(1)(B); R.M.C. 912(a)(2).
- 40. All documents and information related to the identification, review and appointment of commission members. This request includes all documents and information submitted or considered by agents of the United States, regardless of whether the convening authority or her designees considered such matters. Such documents and information include, but are not limited to, the following:
- a. The process used to select the pool of potential commission members, the requests and content of verbal requests for potential commission members, and any criteria to be included or excluded in selecting the pool of potential commission members (e.g., rank, gender, combat experience, etc.);
- b. Any discussions or interviews of potential commission members that agents of the United States participated in or conducted, including, but not limited to, interview notes;
- c. Criteria used in selecting commission members including any communication of any kind made to the convening authority that relate to the qualifications, fitness, availability, character, temperament, or other characteristics of any member;
- d. Any public or private writings or statements made by commission members related to military commissions;
- e. Any other information bearing on the potential impartiality or bias of commission members. R.M.C. 701(b)(1)(B); R.M.C. 912(a)(2).

JUDICIAL NOTICE

- 41. Provide all matters that the government intends to have judicially noticed. M.C.R.E. 201.
- 42. Provide notice and a legible copy of all law, foreign and domestic, of which the government intends to ask the judge to take judicial notice. M.C.R.E. 201A.

EXPERTS

43. The defense requests notice of, and the curricula vitae for, all expert witnesses the government intends to call in its case-in-chief and during pre-sentencing. The defense requests the government disclose the number of times each expert has been qualified as an expert witness in a military or civilian court, the types of court each witness has testified in (civilian or military), the locations (city and state) of each of these courts and the civil and criminal docketed number of each of those cases. The defense further requests disclosure of any information, or evidence considered by the expert prior to testifying. R.M.C. 705.

COMMAND INFLUENCE

- 44. The defense requests all statements, oral or written (including e-mail), made by the convening authority in this case or by any officer (military or civilian) superior to the convening authority, whether written or oral, that:
- a. withhold from a subordinate commander or from any agent of the government the authority to dispose of the accused's case in a court-martial or federal criminal trial in District Court;
- b. provide guidance to any civilian or military authority in this case concerning appropriate levels of disposition and punishment of the offenses, to include types and severity of any restrictions on liberty, either made before or after the offenses at issue in this case;
- c. indicate that the officer has anything other than an official interest in the matter, *United States* v. *Jeter*, 35 M.J. 442, 445 (C.M.A. 1992); R.M.C. 923; R.M.C. 1008.
- 45. Any complaint or report of misconduct filed by or on behalf of Colonel Morris Davis, U.S. Air Force, against Brigadier General Thomas Hartmann, U.S. Air Force, or any other person, relating to allegations of interference or

attempts to improperly influence Colonel Davis in the performance of his duties as Chief Prosecutor for Military Commissions;

- 46. Any complaint or report of misconduct filed by or on behalf of BGEN Hartmann relating to COL Davis;
- 47. Any investigation or inquiry conducted by the Office of the Convening Authority, Office of the General Counsel, Office of the Chief Prosecutor, or other entity relating to matters referenced in subparagraphs d or e above, including but not limited to a complete, unredacted version of the investigation conducted by Brigadier General Clyde Tate, U.S. Army, in September 2007, including all attachments and exhibits thereto;
- 48. Any other document, electronic mail, or other writing relating to mattes referenced in subparagraphs d or e above in the possession, custody or control of the U.S. government.
- 49. Disclosure of any information known to government agents that indicates that a person who forwarded the charges with recommendation is now, or has recently been suspected of committing an offense under the UCMJ. *United States* v. *Nix*, 40 M.J. 6 (C.M.A. 1994).
- 50. All correspondence, including e-mail, from any personnel in the office of the Legal Advisor to the Convening Authority to any personnel in the Office of the Chief Prosecutor concerning the selection of the Kamin case for charging, the nature of the charges, and/or the timing of the swearing of charges, from the date of the appointment of the current Legal Advisor (1 July 07) to the date of swearing of charges on 11 March 2008.
- 51. A copy of the resignation letter of COL Davis, former Chief Prosecutor.
- 52. Any letters or correspondence appointing an interim or acting Chief Prosecutor upon the resignation of COL Davis until the appointment of COL Morris as Chief Prosecutor.
- 53. Any letters or correspondence related to recommendations and/or discussions regarding an "end of tour" award for COL Davis.

54. Any other materials in the possession of the government potentially relevant to the exercise of unlawful influence by the Legal Advisor to the Convening Authority or any other official.

INSTRUCTIONS

55. The defense requests the government provide all proposed instructions it intends to request the commission to use in its instructions to the members and the authority for each instruction.

RULES OF PROCEDURE AND EVIDENCE

- 56. The defense requests that the government produce the following, which is information material to the defense and without which the defense does not believe it can be effective:
- a. Copies of any drafter's analysis, notes, memoranda, emails, circulars, or any other written communication or information regarding the formulation of the rules of procedure and evidence used in these military commissions, how and why rules were drafted as they were, dissents or objections to the formulation, language, construction, or meaning of these rules, and rights provided under these rules.
- b. Sources of law upon which the drafters of these rules relied.
- c. The identity, job description, and contact information of any person involved in, or consulted regarding, the formulation and drafting of these rules.

EVIDENCE REGARDING INDIVIDUALS HELD BY THE UNITED STATES

- 57. The identity and photographs of all individuals detained by the United States or coalition countries, presently or in the past, who are believed to be associated with al Qaeda, so that these individuals can be screened by the defense and Mr. Kamin to search for potential witnesses. R.M.C. 703.
- 58. Copies of all message traffic from the capturing unit, from U.S. Central Command (CENTCOM), or from any higher U.S. authority regarding the "status" under the Geneva

Convention, movement and treatment of Mr. Kamin. R.M.C. 703; R.M.C. 701(c)(1).

- 59. A list of the names and ISN numbers of all released detainees from U.S. Naval Base Guantanamo Bay, Cuba with accompanying photographs. R.M.C. 703.
- 60. Access to review and copy all records in the possession of the government regarding the accused and any other detainee to which the defense is granted access. R.M.C. 703; R.M.C. 701(c)(l).
- 61. Copies of the Rules of Engagement for all U.S. armed forces operating in Afghanistan, particularly those units in or around Khowst and the Afghan border with Pakistan, from January through June 2003, including those issued by CENTCOM, and any and all subordinate authorities.

EVIDENCE HELD BY THE AFGHANISTAN GOVERNMENT

- 62. The defense requests your assistance in obtaining the following information under the control of the government of Afghanistan:
- a. Copies of all audio or video recordings of integrations of Mr. Kamin conducted by Afghan investigators or diplomatic personnel or in which they participated or observed. R.M.C. 701(c)(3); M.C.R.E. 304.
- b. Interviews of the Afghan investigators involved in the investigation of the accused. R.M.C. 701(c)(3); M.C.RE. 304.
- c. Diplomatic correspondence or other communications between the U.S. and Afghan governments relating to the detention, interrogation, investigation, charging, or transfer of Mr. Kamin.

EVIDENCE OF AND CONTENTS OF MONITORING OF THE ACCUSED IN CONSULTATION WITH HIS COUNSEL OR OF COMMUNICATIONS OF AND BETWEEN COUNSEL

63. The defense requests notice of, reasons for, and the dates, nature, and content of any communication monitored in any way between Mr. Kamin and his detailed defense counsel, or any communication between or by counsel for Mr. Kamin, by any government agency at any time during the processing, trial, or other course of this case. If no

such monitoring has occurred, the defense requests a written statement to that effect from the government.

CONCLUSION

- 64. The defense requests equal and adequate opportunity to interview witnesses and inspect evidence. Specifically, the defense requests the trial counsel to instruct all of the witnesses and potential witnesses under military control, including those on any retired list to cooperate with the defense when contacted by the defense for purposes of interviewing these persons or otherwise obtaining information from them. R.M.C. 703.
- 65. This discovery request is continuing and shall apply to any additional charges or specifications that may be preferred after this request for discovery is served upon the government. Immediate notification is requested on all items the government is unable or unwilling to produce.
- 66. The defense seeks to meet all deadlines ordered by the Commission for the filing of motions and pleadings. In order to ensure such timely filings, the defense requests a response to this request be provided no later than 1600 EST, Thursday, 19 June 2008. Additionally, the defense requests that a written response be prepared that responds to each paragraph number as it is referenced in this request.
- 67. Please feel free to contact me if you have any questions and/or concerns about this request. I can be reached at the contact me if you have any questions and/or concerns about this request. I can be or at my new phone number,

Very Respectfully,

Richard E.N. Federico

LT, JAGC, USN

ATTACHMENT C

From: MAJ Omar Ashmawy, USAF, Trial Counsel;

LT Rachel Trest, JAGC, USN, Assistant Trial Counsel

To: LT Richard E.N. Federico, JAGC, USN, Detailed Defense

SUBJ: INITIAL RESPONSE FOR DISCOVERY ICO

UNITED STATES V. MOHAMMED KAMIN

Ref: (a) Defense Request for Discovery ICO United States V. Mohammed Kamin dtd 12 Jun 08

- 1. The government provides the following initial response to the Defense Discovery Request submitted by the detailed Defense Counsel on 12 June 2008.
- 2. The prosecution retains and reserves all of the rights and privileges afforded by MCRE 505, RMC 701(f), other provisions of the Manual for Military Commissions, the Military Commission Act of 2006 and any other statute or regulation and nothing in this response should be construed as a waiver of any kind or of any objection.
- 3. Further, as instructed by this Military Commission, the prosecution notices the Military Commission and the defense that production of much of the materials referenced herein was disclosed to the defense on or about 9 June 2008. The prosecution also intends to make additional productions of the materials referenced herein in accordance with its on going discovery obligations. The prosecution has been gathering the material discussed in this filing. The materials, including those marked unclassified, must be reviewed by the prosecution and the equity holders pursuant to 10 U.S.C. Section 949(f) to protect against disclosure of information detrimental to national security. As a result, each document produced as a result of this filing must first be read to ensure that it does not contain classified material or information that would be detrimental to the security of the United States of America.
- 4. Because of the length of the defense's discovery request, the government needs time to respond to each enumerated request. While the government is expeditiously working on responding to each specific request, the government has produced material referenced herein, and will continue to produce material referenced herein pursuant to a diligent and reasonable search for the requested information.

R.E. Trest LT, JAGC, USN Assistant Trial Counsel

ATTACHMENT D [To be provided UNDER SEAL]

ATTACHMENT E

Office of the Chief Defense Counsel Office of the Military Commissions

19 Jun 08

From: LT Richard E.N. Federico, JAGC, USN, Detailed

Defense Counsel

To: MAJ Omar Ashmawy, USAF, Trial Counsel

LT Rachel Trest, JAGC, USN, Assistant Trial Counsel

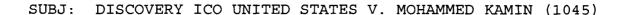
SUBJ: DISCOVERY ICO UNITED STATES V. MOHAMMED KAMIN (1045)

Ref:

- (a) Defense Request for Discovery, dated 12 Jun 08
- (b) Government Initial Response, dated 19 Jun 08
- (c) Defense Request for Discovery, dated 19 Jun 08 (SECRET//NOFORN)
- 1. On 21 May 2008, the Military Judge directed

See Transcript of Arraignment, Page 46. Despite this order from the Commission, to date, the defense has been provided minimal discovery, including a scintilla of records relating to the mental health of Mr. Kamin.

- 2. The defense notes that many issues of discovery remain pending, references (a) through (c), and hereby renews its request that the government provide the requested materials at the earliest possible date. However, to avoid any further delay on the part of the government or ambiguity as to the information the defense seeks related to medical or mental health, the defense requests the government immediately provide the following information and materials as requested herein.
- 3. All evidence in control of or known to the government concerning the physical and mental health of the accused. See generally, United States v. Green, 37 MJ. 88 (C.M.A. 1993). Material sought includes, but is not limited to, medical records reflecting psychiatric diagnosis or treatment or head injury of any type and drug and/or alcohol addiction diagnosis or rehabilitation records.



United States v. Brakefield, 43 C.M.R. 828 (A.C.M.R 1971);
United States v. Brickey, 8 M.J. 757 (A.C.M.R 1980)
affirmed 16 M.J. 258 (C.M.A. 1983); United States v.
Eschalomi, 23 M.J. 12 (C.MA 1985); R.M.C. 701(c)(2), 706.

- 4. Any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, that are within the possession, custody, or control of the government at any level, the existence of which is known, or by the exercise of due diligence may become known, to the trial counsel, and which are material to the preparation of the defense or are intended for use by the trial counsel as evidence in the prosecution case in chief at trial. R.M.C. 701(c)(2). This specifically includes, but is not limited to:
- a. Copies of the records of any and all medical screenings, physicals, examinations, mental health evaluations, as well as notes prepared by any treating physician, physician's assistant, medic, psychiatrist, psychologist, chaplain, counselor, or other person who has examined the mental or physical condition of Mr. Kamin at any time since he entered the custody of the United States (whether or not that custody was transferred at some time), including, but not limited to, all files related to Mr. Kamin created or kept by any "Behavioral Sciences Team" involved with Mr. Kamin.
- b. The defense does not authorize the government to review or examine any such reports, notes, or other documents as they may be covered by M.C.R.E. 503 or 513, by M.C.R.E. 302, or by common-law privileges and privacy interests with respect to medical treatment. The defense does, however, request that the government order any such material turned over to the defense and provide contact information for any person who obtained or created such reports or other material.
- 5. Any and all records containing information pertaining to Mr. Kamin's physical or mental condition. This request includes, but is not limited to, medical records held at U.S. Naval Base, Guantanamo Bay, Cuba, as well as records in the possession of any (United States or other) government agency that had contact with Mr. Kamin since his detention or arrest in May 2003.

SUBJ: DISCOVERY ICO UNITED STATES V. MOHAMMED KAMIN (1045)

- 6. Any and all information pertaining to medications currently and previously prescribed to Mr. Kamin, the dosage of all medications given to him, when the medications were each first prescribed and for how long. In addition, the defense requests production of the name and contact information of any and all physicians who have monitored, or are currently monitoring, Mr. Kamin's condition. This request is not limited to any psychiatrists or psychologists, but includes a request for the name and contact information of all medical personnel who have monitored Mr. Kamin.
- 7. Please feel free to contact me if you have any questions and/or concerns about this request. I can be reached at or at my new phone number,

Very Respectfully,

Richard E.N. Federico LT, JAGC, USN

ATTACHMENT F

From: Federico, Richard, LT, DoD OGC Sent: Thursday, June 19, 2008 4:32 PM

To: Trest, Rachel, Ms. DoD OGC; Ashmawy, Omar, CPT, DoD OGC

Cc:

Subject: RE: Request for Discovery ICO U.S. v. Kamin

TCs:

Thank you for the response. Couple of notes:

- 1. MEDICAL RECORDS. By order of the Military Judge during the arraignment on 21 May 2008, the government was to review all mental health records related to Mr. Kamin and either turn them over to the defense or to the Commission for a review, in camera. To date, I have received very few records concerning medical and mental health of Mr. Kamin. I know the records provided on 9 June 2008 are incomplete as they reference "Medical Record" as to diagnostic impressions made by the mental health professionals. It is critical that the defense be provided this information as soon as possible. Attached please find an additional request, specific to medical and mental health records.
- 2. CLASSIFIED DISCOVERY REQUEST. Please note that this afternoon I submitted a discovery request to your email accounts on SIPR. It is classified SECRET/NOFORN.
- 3. REFERRAL BINDER. One of the CDs provided on 9 June 2008 appears to be the "referral binder" submitted to the convening authority (CA) prior to referral of charges. Can you please confirm this to be true and whether the CD contained the full "binder" considered by the CA prior to making a decision regarding referral.
- 4. GOVERNMENT INITIAL RESPONSE. I respectfully disagree with the assertion that the "production of much of the materials referenced herein was disclosed to the defense on or about 9 June 2008." This cannot be so. was provided 55 pages which I believe to be the "referral binder" and 33 pages of records of medical care from the last three years which, as noted above, are not the full records relating to his mental health that were ordered be produced. It is inconceivable that these 88 pages represent more than a mere fraction of the documents and information in the possession of the United States government related to this case. I recognize from your response that the prosecution must seek permission from the "equity owners" of any information before release and this delays it being provided to the defense. However, I note that it was reasonably foreseeable that much, if not all, of the materials requested would be sought by the defense and/or are otherwise required to be disclosed by law. I have no doubt that you are working expeditiously and diligently to meet your discovery obligations. However, please note that delays incurred thus far and any future delays in providing this information has and will substantially impair my ability to provide adequate representation to Mr. Kamin.

Please feel free to call if you would like to discuss these or any other matters. I am scheduled to travel to GTMO next Tuesday but should be reachable at

Very Respectfully,

Richard E.N. Federico Lieutenant, JAG Corps, U.S. Navy Defense Attorney

Office of Military Commissions
Office of Chief Defense Counsel

CAUTION: This communication may be privileged as attorney work product and/or attorney-client communications or may be protected by another privilege recognized under the law. Do not distribute, forward, or release without the prior approval of the sender or DoD OGC Office of Military Commissions, Office of Chief Defense Counsel. In addition, this communication may contain individually identifiable information the disclosure of which, to any person or agency not entitled to receive it, is or may be prohibited by the Privacy Act, 5 U.S.C. 522a. Improper disclosure of protected information could result in civil action or criminal prosecution.